

**Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
TRANS VIDEO COMMUNICATIONS, INC.	)	File No. BMPLIF-19950728ER
	)	
For Modification of License of	)	
Instructional Television Fixed Service	)	
Station KNZ70 in Queens, New York	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 2, 2003****Released: September 5, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we address the above-captioned application filed by Trans Video Communications, Inc. (TVC) for authority to modify its Instructional Television Fixed Service (ITFS) Station KNZ70 operating on Channels F1-F4 in Queens, New York.<sup>1</sup> Specifically, TVC seeks modification of the license of Station KNZ70 for a protected service area during excess capacity airtime transmissions. In this connection, we also address a petition to deny filed by Grand MMDS Alliance New York F/P Partnership (Grand Alliance).<sup>2</sup> For the reasons stated below, we grant the Grand Alliance Petition to the extent indicated herein, and we dismiss TVC's application.

**II. BACKGROUND**

2. In 1963, the Commission established ITFS in the 2500-2690 MHz band on a shared basis with existing Fixed Service stations.<sup>3</sup> When the Commission established ITFS, it indicated that the service was envisioned to be used for transmission of instructional material to selected receiving locations

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<sup>1</sup> Application for Modification of ITFS Station (FCC Form 330) - File No. BMPLIF-19950728ER (filed July 28, 1995) (Application).

<sup>2</sup> Petition to Deny filed by Grand MMDS Alliance New York F/P Partnership (filed Sep. 27, 1995) (Petition). TVC opposed the petition to deny on October 12, 1995. Opposition of Petition to Deny (filed Oct. 12 1995) (Opposition). Grand Alliance filed a reply on October 31, 1995. Reply to Opposition (filed Oct. 31, 1995) (Reply). TVC filed a response to reply on November 13, 1995. Response to Reply (filed Nov. 13, 1995)(Response). Grand Alliance filed a reply to response on November 22, 1995. Reply to Response (filed Nov. 22, 1995) (Reply to Response). Grand Alliance filed a Motion to Strike or, in the Alternative, Accept Responsive Pleading on November 22, 1995. Motion to Strike (filed on Nov. 22, 1995) (Motion). TVC filed an Opposition to Motion to Strike on December 04, 1995. Opposition to Motion to Strike (filed on Dec. 4, 1995) (Opposition to Motion).

<sup>3</sup> See Educational Television *Report and Order*, Docket No. 14744, 39 FCC 846 (1963) (*MDS R&O*), *recon. denied*, 39 FCC 873 (1964) (*ETV Decision*).

in accredited public and private schools, colleges and universities for the formal education of students.<sup>4</sup> It also permitted ITFS licensees to use the channels for incidental purposes.<sup>5</sup> These incidental purposes included the transmission of cultural and entertainment material to those receiving locations; special training material to selected receiving locations outside the school system (such as hospitals, nursing homes, training centers, clinics, rehabilitation centers, commercial and industrial establishments); and special material to professional groups or individuals to inform them of new developments and techniques in their fields and instruct them in their use.<sup>6</sup> ITFS licensees also could utilize the channels to perform other related services directly concerned with formal or informal instruction and training. In addition, when the ITFS facilities were not being used for such incidental purposes, the licensee could use them for administrative traffic (e.g., transmission of reports, assignments and conferences with personnel);<sup>7</sup> however, individual stations, or complete systems could not be licensed solely for handling administrative traffic.<sup>8</sup>

3. An ITFS response station is authorized to provide communication by voice, video and/or data signals with its associated ITFS response station hub or associated ITFS station.<sup>9</sup> Each main channel has an associated 125 kHz response channel<sup>10</sup> that may be used for response stations.<sup>11</sup> ITFS response stations may operate on either all or part of a 6 MHz channel assigned a licensee, and/or on any of the 125 kHz response channels assigned to a licensee.<sup>12</sup>

4. TVC is the licensee of grandfathered ITFS Stations KNZ70 and KVS31.<sup>13</sup> Both stations are authorized to operate on the F Channel Group in Queens, and Brooklyn, New York, respectively.<sup>14</sup> TVC currently leases excess airtime capacity on those stations.<sup>15</sup> The receiving locations are educational institutions which have agreed to use the services offered by TVC.<sup>16</sup> On July 28, 1995, TVC filed the instant application requesting a protected service area (PSA) during leased air time transmissions for ITFS

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<sup>4</sup> Amendment of the Commission's Rules With Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems, *Report and Order*, 48 Fed. Reg. 33873, 33875 ¶ 9 (1983) (1983 R&O) (citing *ETV Decision*, 39 FCC 846, 853 ¶ 25).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 74.939(a).

<sup>10</sup> The 125 kHz channels are located in the 2686-2690 MHz band. 47 C.F.R. § 74.939(j).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The most recent renewal licenses for Stations KNZ70 and KVS31 were issued on April 22, 1999 and October 29, 1998, respectively.

<sup>14</sup> These stations serve as repeaters for TVC's main station, KNZ69, which operates on the B Channel Group in Brooklyn, New York.

<sup>15</sup> Request for Waiver at 2. TVC entered into a "Channel Coordination and Excess Channel Capacity Lease Agreement" (Agreement) with CAI Wireless Systems, Inc. (CAI), a provider of entertainment programming. TVC filed a copy of the Agreement with the Commission as an amendment to its license for ITFS Station KNZ-69 for Brooklyn, New York, on February 3, 1995. Under the terms of the Agreement, CAI would broadcast its programming via TVC's facilities at such time as TVC is not engaged in its educational broadcast activities.

<sup>16</sup> *Id.*

Station KNZ70, Queens, NY.<sup>17</sup> The application appeared on public notice as accepted for filing on August 28, 1995.

5. Grand Alliance is the tentative selectee of the F Channel Group for Multichannel Multipoint Distribution Service (MMDS) in New York, New York.<sup>18</sup> Grand Alliance states that the Application should be denied because grant of the Application would disrupt the interference resolution between Grand Alliance and TVC.<sup>19</sup> Noting that it currently has two applications pending before the Commission, Grand Alliance states that TVC or CAI could also use the modification as a basis to object to either application.<sup>20</sup>

6. In its opposition to the Petition, TVC states that Grand Alliance seeks to circumvent the Commission's rules requiring it to negotiate a non-interference agreement with TVC for operation of its proposed co-channel MMDS facility.<sup>21</sup> Specifically, TVC states that Grand Alliance obtained the rights to the F Channel Group in New York City subject to TVC's co-channel operations, and that it must protect TVC's co-channel ITFS facilities.<sup>22</sup> Accordingly, TVC asserts that it has authority to operate Station KNZ70 for any excess channel capacity airtime and, thus, should receive protection from harmful interference during such transmissions.<sup>23</sup>

### III. DISCUSSION

7. In 1983, the Commission redesignated the E Group and F Group channels from ITFS to MMDS.<sup>24</sup> The Commission took that action in an effort to spur the development of competition to cable television systems and promote effective and intense utilization of the spectrum.<sup>25</sup> As part of its decision, the Commission allowed ITFS licensees currently operating on the E Group and F Group channels to remain operating, but placed the following limitations on such stations:

Grandfathered ITFS stations operating on the E and F channels will only be protected to the extent of their service that is either in the operation or the application stage as of May 26, 1983. These licensees or applicants will not generally be permitted to change transmitter location or antenna height, or to change transmission power. In addition, any new receive stations added after May 26, 1983 will not be protected against interference

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<sup>17</sup> Application at Exhibit 1 (ITFS Application File No. BMPLIF-19950728ER) (filed July 28, 1995).

<sup>18</sup> FCC File No. 5455-CM-P-83 (filed September 9, 1983). This application, as amended on December 31, 1986, proposes operations from a transmitter site located on the Empire State Building in Manhattan.

<sup>19</sup> Petition at 1-2.

<sup>20</sup> *Id.* Grand Alliance filed an application seeking a minor amendment to its pending MMDS service application for the New York, New York market. The amendment proposes an interim reduction in transmission time to avoid interference with TVC's use of the F Channel Block of ITFS purposes. See Petition for Leave to Amend and Minor Amendment, FCC File No. 5455-CM-P-83 (filed September 14, 1995).

<sup>21</sup> Opposition at 3.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 4, 5.

<sup>24</sup> In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, GN Docket No. 80-112, CC Docket No. 80-116, *Report and Order*, 94 FCC 2d 1209 (1983) (*E and F Group Reallocation Order*).

<sup>25</sup> *Id.*, 94 FCC 2d at 1228 ¶¶ 60-61.

from MDS transmissions. In this fashion, all facets of grandfathered ITFS operations were frozen as of May 26, 1983.<sup>26</sup>

Further, this limitation applies to ITFS use of the 125 kHz response channels associated with the E and F Group channels.<sup>27</sup>

8. Thus, in light of the Commission's policy as codified by Section 74.902(c) of the Commission's Rules, we find TVC's application defective on its face because it was filed after May 26, 1983 and without a waiver. Although the Commission recognized the possibility that "there may be instances where the natural evolution of an ITFS may reasonably require the addition of receive stations without changing the nature or the scope of the ITFS operation",<sup>28</sup> TVC has not demonstrated that such treatment is warranted here. Therefore, based on the record before us and pursuant to Section 74.902(c) of the Commission's Rules, we conclude that the application should be dismissed.

9. In addition, we find TVC's request for a PSA for Station KNZ70 to now be moot. In this regard, we note that in 1998, the Commission amended Parts 21 and 74 of its rules to provide licensees in MDS and ITFS with substantially increased operational and technical flexibility.<sup>29</sup> In the *Two-Way Order*, it granted PSAs to every ITFS licensee and granted individual protection to all receive sites registered through the date of adoption of the *Two-Way Order*.<sup>30</sup> Specifically, Section 74.903(d) of the Commission's Rules, which codifies this change in policy, states that a licensee "must be protected from harmful electrical interference at each of its receive sites registered previously as of September 17, 1998, and within a protected service area...."<sup>31</sup> Thus, regardless of whether TVC intended to offer service over its excess channel capacity on its own or pursuant to a lease, Section 74.903(d) sets forth TVC's protection from harmful interference with respect to its operation of Station KNZ70.

#### IV. CONCLUSION AND ORDERING CLAUSES

10. Because TVC's application was filed after the May 26, 1983, the date designated by the Commission after which no new applications for ITFS applications for the E and F Group Channels would be accepted, we conclude that the application is defective pursuant to Section 73.3566 of the Commission's Rules.<sup>32</sup> We therefore dismiss the application.

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.939(g), 21.30 and 74.912 of the Commission's rules, 47 C.F.R. §§ 1.939(g), 21.30, 74.912, the Petition to Deny filed by the Grand

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<sup>26</sup> In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, GN Docket No. 80-112, CC Docket No. 80-116, *Memorandum Opinion and Order on Reconsideration*, 98 FCC 2d 129, 132-33 ¶ 12 (1983) (*E and F Group Reallocation Reconsideration Order*).

<sup>27</sup> 47 C.F.R. § 74.902(c).

<sup>28</sup> *E and F Group Reallocation Reconsideration Order*, 98 FCC 2d at \_\_, n.8.

<sup>29</sup> See In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, 13 FCC Rcd 19,112 (1998) ("Two-Way Order") *recon*, 14 FCC Rcd 12,764 (1999).

<sup>30</sup> *Two-Way Order*, 13 FCC Rcd at 19,173.

<sup>31</sup> 47 C.F.R. § 74.903(d) (2002).

<sup>32</sup> 47 C.F.R. § 73.3566.

MMDS Alliance New York F/P Partnership on September 27, 1995, IS GRANTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 73.3566 and 74.912 of the Commission's Rules, 47 C.F.R. §§ 73.3566, 74.912, that the application filed by Trans Video Communications, Inc., FCC File No. BMPLIF-19950728ER on July 28, 1995, IS DISMISSED.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
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